

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA, LLC D/B/A/ IXO,

Plaintiff,

v.

PACKETEER, INC.,
BLUE COAT SYSTEMS, INC.,
CITRIX SYSTEMS, INC.,
EXPAND NETWORKS, INC.,
F5 NETWORKS, INC.,
7-ELEVEN, INC.,
ABM INDUSTRIES, INC.,
ABM JANITORIAL SERVICES –
SOUTH CENTRAL, INC.,
AVERITT EXPRESS, INC.,
BUILD-A-BEAR WORKSHOP, INC.,
DHL EXPRESS (USA), INC.,
INTERSTATE BATTERY SYSTEM OF
AMERICA, INC., AND
O'REILLY AUTOMOTIVE, INC.

Defendants.

Civil Action No. 6:08-cv-00144-LED

JURY TRIAL DEMANDED

**ANSWER OF REALTIME DATA, LLC D/B/A IXO TO DEFENDANT
AND COUNTER-PLAINTIFF PACKETEER, INC.'S AMENDED
COUNTERCLAIMS**

Pursuant to the Federal Rules of Civil Procedure Rule 8, Plaintiff Realtime Data, LLC d/b/a IXO ("Realtime Data"), by and through its undersigned counsel, hereby replies to Defendant and Counter-Plaintiff Packeteer, Inc.'s counterclaims of Invalidity and Non-Infringement filed on July 10, 2008, in Defendant and Counterclaim-Plaintiff's Answer and Counterclaims To Plaintiff's First Amended Complaint ("Amended Counterclaims").

Jurisdiction and Venue

1. Realtime Data admits that Defendant and Counterclaim-Plaintiff seeks declaratory relief and that this Court has subject matter jurisdiction over the counterclaims. Except as so admitted, Realtime Data denies the averments of this Paragraph 1¹ of the Amended Counterclaims.

2. Realtime Data admits that venue is proper in this judicial district. Except as so admitted, Realtime Data denies the averments of this Paragraph 2 of the Amended Counterclaims.

The Parties

3. Upon information and belief, Realtime Data admits the averments of Paragraph 3 of the Amended Counterclaims.

4. Realtime Data admits the averments in Paragraph 4 of the Amended Counterclaims.

First Counterclaim (Non-infringement of the '104 Patent)

5. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

6. Realtime Data admits the averments of Paragraph 6 of the Amended Counterclaims.

7. Realtime Data denies the averments of Paragraph 7 of the Amended Counterclaims.

¹ The Paragraph numbering referencing the Counterclaims referred to herein begin on page 48 of the Counterclaims (pages are not numbered).

8. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 8 of the Amended Counterclaims.

9. Realtime Data denies the averments of Paragraph 9 of the Amended Counterclaims.

10. Realtime Data denies the averments of Paragraph 10 of the Amended Counterclaims.

Second Counterclaim (Invalidity of the '104 Patent)

11. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

12. Realtime Data admits the averments of Paragraph 12 of the Amended Counterclaims.

13. Realtime Data denies the averments of Paragraph 13 of the Amended Counterclaims.

14. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 14 of the Amended Counterclaims.

15. Realtime Data denies the averments of Paragraph 15 of the Amended Counterclaims.

16. Realtime Data denies the averments of Paragraph 16 of the Amended Counterclaims.

Third Counterclaim (Non-infringement of the '158 Patent)

17. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

18. Realtime Data admits the averments of Paragraph 18 of the Amended Counterclaims.

19. Realtime Data denies the averments of Paragraph 19 of the Amended Counterclaims.

20. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 20 of the Amended Counterclaims.

21. Realtime Data denies the averments of Paragraph 21 of the Amended Counterclaims.

22. Realtime Data denies the averments of Paragraph 22 of the Amended Counterclaims.

Fourth Counterclaim (Invalidity of the '158 Patent)

23. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

24. Realtime Data admits the averments of Paragraph 24 of the Amended Counterclaims.

25. Realtime Data denies the averments of Paragraph 25 of the Amended Counterclaims.

26. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 26 of the Amended Counterclaims.

27. Realtime Data denies the averments of Paragraph 27 of the Amended Counterclaims.

28. Realtime Data denies the averments of Paragraph 28 of the Amended Counterclaims.

Fifth Counterclaim (Non-infringement of the '761 Patent)

29. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

30. Realtime Data admits the averments of Paragraph 30 of the Amended Counterclaims.

31. Realtime Data denies the averments of Paragraph 31 of the Amended Counterclaims.

32. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 32 of the Amended Counterclaims.

33. Realtime Data denies the averments of Paragraph 33 of the Amended Counterclaims.

34. Realtime Data denies the averments of Paragraph 34 of the Amended Counterclaims.

Sixth Counterclaim (Invalidity of the '761 Patent)

35. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

36. Realtime Data admits the averments of Paragraph 36 of the Amended Counterclaims.

37. Realtime Data denies the averments of Paragraph 37 of the Amended Counterclaims.

38. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 38 of the Amended Counterclaims.

39. Realtime Data denies the averments of Paragraph 39 of the Amended Counterclaims.

40. Realtime Data denies the averments of Paragraph 40 of the Amended Counterclaims.

Seventh Counterclaim (Non-infringement of the '506 Patent)

41. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

42. Realtime Data admits the averments of Paragraph 42 of the Amended Counterclaims.

43. Realtime Data denies the averments of Paragraph 43 of the Amended Counterclaims.

44. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 44 of the Amended Counterclaims.

45. Realtime Data denies the averments of Paragraph 45 of the Amended Counterclaims.

46. Realtime Data denies the averments of Paragraph 46 of the Amended Counterclaims.

Eighth Counterclaim (Invalidity of the '506 Patent)

47. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

48. Realtime Data admits the averments of Paragraph 48 of the Amended Counterclaims.

49. Realtime Data denies the averments of Paragraph 49 of the Amended Counterclaims.

50. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 50 of the Amended Counterclaims.

51. Realtime Data denies the averments of Paragraph 51 of the Amended Counterclaims.

52. Realtime Data denies the averments of Paragraph 52 of the Amended Counterclaims.

Ninth Counterclaim (Non-infringement of the '937 Patent)

53. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

54. Realtime Data admits the averments of Paragraph 54 of the Amended Counterclaims.

55. Realtime Data denies the averments of Paragraph 55 of the Amended Counterclaims.

56. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 56 of the Amended Counterclaims.

57. Realtime Data denies the averments of Paragraph 57 of the Amended Counterclaims.

58. Realtime Data denies the averments of Paragraph 58 of the Amended Counterclaims.

Tenth Counterclaim (Invalidity of the '937 Patent)

59. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

60. Realtime Data admits the averments of Paragraph 60 of the Amended Counterclaims.

61. Realtime Data denies the averments of Paragraph 61 of the Amended Counterclaims.

62. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 62 of the Amended Counterclaims.

63. Realtime Data denies the averments of Paragraph 63 of the Amended Counterclaims.

64. Realtime Data denies the averments of Paragraph 64 of the Amended Counterclaims.

Eleventh Counterclaim (Non-infringement of the '992 Patent)

65. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

66. Realtime Data admits the averments of Paragraph 66 of the Amended Counterclaims.

67. Realtime Data denies the averments of Paragraph 67 of the Amended Counterclaims.

68. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 68 of the Amended Counterclaims.

69. Realtime Data denies the averments of Paragraph 69 of the Amended Counterclaims.

70. Realtime Data denies the averments of Paragraph 70 of the Amended Counterclaims.

Twelfth Counterclaim (Invalidity of the '992 Patent)

71. Realtime Data repeats its responses to Defendant and Counterclaim-Plaintiff's allegations set forth in Paragraphs 1-4 of the Amended Counterclaims, as set forth in paragraphs 1-4 of this Answer.

72. Realtime Data admits the averments of Paragraph 72 of the Amended Counterclaims.

73. Realtime Data denies the averments of Paragraph 73 of the Amended Counterclaims.

74. Realtime Data admits that it has filed a Complaint and an Amended Complaint for infringement by Defendant and Counterclaim-Plaintiff and others of U.S. Patent Nos. 6,601,104, 6,604,158, 6,624,761, 7,161,506, 7,321,937, and 7,378,992. Except as so admitted, Realtime Data denies the averments of Paragraph 74 of the Amended Counterclaims.

75. Realtime Data denies the averments of Paragraph 75 of the Amended Counterclaims.

76. Realtime Data denies the averments of Paragraph 76 of the Amended Counterclaims.

REQUEST FOR RELIEF

WHEREFORE, Realtime Data petitions this Court and requests that a judgment be entered and that relief be granted as follows:

A. A declaration that each of its Patents is valid and infringed by the Defendant and Counterclaim-Plaintiff;

B. A judgment dismissing with prejudice Defendant and Counterclaim-Plaintiff's Counterclaims and every Prayer for Relief contained therein;

- C. An award to Realtime Data its costs and attorneys' fees; and
- D. An award to Realtime Data such other, further, or general relief as this

Court may deem proper.

Dated: July 28, 2008

Respectfully submitted,

POTTER MINTON
A Professional Corporation

By: /s/ John F. Bufo

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 28th day of July, 2008. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ John F. Bufe
John F. Bufe